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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MOSES SCOTT, INDIVIDUALLY, AND
AS ESTATE ADMINISTRATOR OF THE
ESTATE OF REGINA KELLY,
DECEASED,

Plaintiff,

v.

MERCK & CO., INC., MERCK SHARP &
DOHME CORP., MERCK SHARP &
DOHME LTD., MERCK SHARP &
DOHME (ITALIA) S.P.A., INC., AMYLIN
PHARMACEUTICALS, INC., AMYLIN
PHARMACEUTICALS, LLC, AND ELI
LILLY AND COMPANY, and DOES 1-100,

Defendants.

Case No. 12cv2549-AJB (MDD)

Honorable: Mitchell D. Dembin

PARTIES' JOINT RULE 26(f)
CONFERENCE REPORT AND DISCOVERY
PLAN

This statement also pertains to Case Nos.
12cv2553-AJB (MDD), 12cv2556-AJB (MDD),
12cv2557-AJB (MDD), 12cv2560-AJB (MDD),
12cv2561-AJB (MDD), 12cv2562-AJB (MDD),
12cv2566-AJB (MDD), 12cv2572-AJB (MDD),
12cv2782-AJB (MDD), 12cv2965-AJB (MDD),
12cv3021-AJB (MDD), 12cv3026-AJB (MDD),
12cv3020-AJB (MDD), 12cv3079-AJB (MDD),
13cv76-AJB (MDD)

Pursuant to this Court's December 28, 2012 Orders and Rule 26(f) of the Federal Rules of Civil Procedure, counsel for plaintiffs in the above-named actions, Watts Guerra Craft LLP, Napoli Bern Ripka Shkolnik LLP, TorHoerman Law LLC, and Wagstaff & Cartmell (collectively, "Plaintiffs' Counsel"), and counsel for defendants Amylin Pharmaceuticals, LLC ("Amylin"), Eli Lilly and Company ("Lilly"), and Merck & Co. ("Merck") (collectively, "Defendants"), together, the "Parties," have conferred regarding discovery in the above-captioned cases and hereby jointly submit this Rule 26(f) Conference Report and Discovery Plan.

I. Parties' Agreement Regarding a Primary Source of Discovery

As directed in the Court's December 28, 2012 Order, the Parties have discussed issues relating to coordination of discovery with similar cases brought by Plaintiffs' Counsel in other jurisdictions. In addition to the above-referenced cases, Plaintiffs' Counsel have personal injury actions pending against the Defendants in state courts in New Jersey and California, and against some of the Defendants in federal courts in the Northern District of Illinois and the Western District of Missouri, which also involve allegations relating to use of the same products that are at issue in the above-captioned cases.

As substantial efforts are underway with respect to written discovery and document production regarding cancer injuries in this Court, the Parties agree to make best efforts to utilize discovery productions arising out of this Court in order to avoid duplicative efforts in cancer actions pending in other jurisdictions.

II. Initial Disclosures

A. Plaintiff Fact Sheet

Plaintiff's Initial Disclosures shall consist of (1) a fully-executed Plaintiff Fact Sheet ("PFS"); and (2) documents responsive to Section VI of the Plaintiff Fact Sheet, including signed and executed HIPAA-compliant authorizations, to be served in accordance with the timetable set forth in Section V below.

With respect to the Plaintiff Fact Sheet, the Parties further agree as follows:

1. The Plaintiff in each of the above-captioned cases shall serve the PFS upon counsel for each Defendant served in the action. Each Defendant shall designate, by notice to the

1 appropriate Plaintiff's counsel, the specific counsel for that Defendant upon which the PFS shall
2 be served. Service of the PFS shall be either in hard copy or in an electronic format on CD or
3 DVD via first class mail, or via PDF or similar format to an email address to be provided by
4 counsel for defendants, but in either instance shall contain the signature of the Plaintiff in Section
5 VIII of the PFS. Each Plaintiff Fact Sheet will be signed and dated by the Plaintiff or the proper
6 Plaintiff representative under penalty of perjury.

7 2. Authorizations shall be signed without setting forth the identity of the
8 custodian of the records or provider of care. Defendants may use the authorizations for all
9 healthcare providers and other sources of information and records (*e.g.*, pharmacies, employers,
10 etc.) identified in the PFS, without further notice to Plaintiff's counsel.

11 3. If any Defendant wishes to use an Authorization to obtain records from a
12 source that is not identified in the PFS, the Defendant shall provide Plaintiff's counsel with seven
13 (7) days written notice (by telecopy or email) of the intent to use an Authorization to obtain
14 records from that source. If Plaintiff's counsel fails to object to the request within seven (7) days,
15 the Defendant may use the Authorization to request the records from the source identified in the
16 notice. If Plaintiff's counsel objects to the use of the Authorization to obtain records from the
17 source identified in the notice within said seven (7) day period, Plaintiff's counsel and
18 Defendant's counsel shall meet and confer in an attempt to resolve the objection. If counsel are
19 unable to resolve the objection, Defendant shall file a motion to compel within fourteen (14) days
20 of the meet and confer.

21 4. Undated Authorizations constitute permission for Defendants or their
22 agents to date Authorizations before sending to records custodians, provided that the date affixed
23 is not later than December 31, 2013. In addition, Defendants are authorized to re-date the
24 Authorizations to the date that they are being sent to the healthcare providers and other entities
25 that require Authorizations, provided that the date affixed is not later than December 31, 2013.
26 Defendants shall be permitted to "white-out" the date and re-date.

27 5. In the event that a signed Authorization does not contain the following
28 information with respect to the Plaintiff – or, in the case of an Authorization signed in a

1 representative capacity, the information with respect to the represented party – Defendants or
2 their record copy vendor are authorized to fill in the following information:

- 3 a. The name and/or address of the Plaintiff, or represented
4 party, at the top of the Authorization;
- 5 b. The social security number;
- 6 c. The date of birth; and
- 7 d. The name of defense counsel or their record copy vendor as
8 the party to whom records may be released.

9 6. In the event that an institution or medical provider to whom any
10 Authorization is presented will not provide records in response to that Authorization, Plaintiff
11 will cooperate with Defendants in providing the necessary authorization(s). Should a particular
12 form be required, Defendants will provide it to Plaintiff's counsel. The Plaintiff shall execute and
13 return within 30 days whatever form is required by that institution or provider.

14 7. Defendants and their record collection vendors shall have the right to
15 contact institutions or medical providers to follow up on record copying or production.

16 8. The Parties agree to meet and confer concerning an efficient and fair
17 process for making available to Plaintiffs records Defendants obtain by use of Authorizations.

18 9. All responses in a Plaintiff Fact Sheet are binding on the Plaintiff and shall
19 be treated as answers to interrogatories under Fed. R. Civ. P. 33 and responses to requests for
20 production of documents under Fed. R. Civ. P. 34 and shall be subject to supplementation in
21 accordance with Fed. R. Civ. P. 26. The PFS questions and requests for production have been
22 negotiated and agreed to by the Parties. All objections to the admissibility of information
23 contained in the PFS are reserved and therefore no objections shall be lodged in the responses to
24 the questions and requests contained in the PFS. In the event that a dispute arises concerning the
25 completeness or adequacy of a Plaintiff's response to any request contained in the PFS, this
26 section shall not prohibit the Plaintiff from asserting that his or her response is adequate. Nothing
27 in this section prohibits a Plaintiff from withholding or redacting information based upon a
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1 recognized privilege. If information is withheld or redacted on the basis of privilege, Plaintiff
2 shall provide Defendants with a privilege log.

3 10. Defendants' receipt of a PFS, Requested Documents, and Authorizations
4 shall be without prejudice to Defendants' right to move this Court to serve additional written
5 discovery.

6 11. Nothing in the PFS shall be deemed to limit the scope of inquiry at
7 depositions and admissibility of evidence at trial. The scope of inquiry at depositions shall
8 remain governed by the Federal Rules of Civil Procedure. The admissibility of information in
9 responses to the PFS shall be governed by the Federal Rules of Evidence and no objections are
10 waived by virtue of any PFS response.

11 12. A Plaintiff who fails to provide a signed and verified PFS, signed and dated
12 Authorizations, and all Responsive Documents requested in the PFS within the time periods set
13 forth above may be given notice by e-mail or fax from counsel for any Defendant to counsel for
14 Plaintiff at any time. Such notice shall be sufficient to serve as notice for all Defendants,
15 although it may be supplemented by counsel for any other Defendant. Plaintiffs shall be given 30
16 days to cure any such deficiency, after which time any Defendant may seek appropriate relief
17 from this Court for failure to cure.

18 13. In the event a Defendant contends that a PFS, Authorizations, or Requested
19 Documents are not substantially complete, notice may be given by e-mail or fax to counsel for
20 Plaintiff at any time. Such notice shall be sufficient to serve as notice for all Defendants,
21 although it may be supplemented by counsel for any other Defendant. Plaintiffs shall be given 30
22 days to cure any such deficiency, after which time any Defendant may seek appropriate relief
23 from this Court for failure to cure.

24 **B. Defendant Fact Sheet**

25 Defendants' Initial Disclosures shall consist of a completed Defendant Fact Sheet
26 for each Plaintiff in the above-captioned cases, along with copies of the documents, identified for
27 production in the Defendant Fact Sheet, to be served in accordance with the timetable set forth in
28 Section V below.

1 All responses in a Defendant Fact Sheet are binding on the Defendant and shall be
2 treated as answers to interrogatories under Fed. R. Civ. P. 33 and responses to requests for
3 production of documents under Fed. R. Civ. P. 34 and shall be subject to supplementation in
4 accordance with Fed. R. Civ. P. 26. The DFS questions and requests for production have been
5 negotiated and agreed to by the Parties. All objections to the admissibility of information
6 contained in the DFS are reserved and therefore no objections shall be lodged in the responses to
7 the questions and requests contained in the DFS.

8 Plaintiff's receipt of a DFS and Requested Documents shall be without prejudice
9 to Plaintiff's right to move this Court to serve additional written discovery.

10 Nothing in the DFS shall be deemed to limit the scope of inquiry at depositions
11 and admissibility of evidence at trial. The scope of inquiry at depositions shall remain governed
12 by the Federal Rules of Civil Procedure. The admissibility of information in responses to the
13 DFS shall be governed by the Federal Rules of Evidence and no objections are waived by virtue
14 of any DFS response.

15 A Defendant who fails to provide a signed and verified DFS and all Responsive
16 Documents requested in the DFS within the time periods set forth herein may be given notice by
17 e-mail or fax from counsel for any Plaintiff to counsel for Defendant at any time. Defendants
18 shall be given 30 days to cure any such deficiency, after which time any Plaintiff may seek
19 appropriate relief from this Court for failure to cure.

20 **III. Discovery of Electronically Stored Information**

21 Within thirty (30) days after service of Defendants' initial objections and
22 responses to Plaintiffs' written discovery requests, the Parties will submit to the Court a Joint
23 Electronic Discovery Protocol, which will address:

- 24 (a) likely custodians of relevant electronic materials for each
25 Defendant, including each person's title;
- 26 (b) search terms that will be used to identify documents for production
27 from the collections of those custodians;
- 28 (c) the format in which documents will be produced;

(d) a description of any problems reasonably anticipated to arise with e-discovery.

IV. Protective Order

A proposed Protective Order to govern discovery of confidential materials and information is attached hereto as Exhibit A. The Parties have agreed to all terms in the Protective Order, except for the bolded and italicized provisions in Paragraph 15. The Parties plan to discuss the disputed provisions with the Court at the Case Management Conference.

V. Discovery Schedule

Initial Disclosures	
Plaintiffs' Fact Sheet	60 days from entry of Order regarding Plaintiff Fact Sheet
Defendants' Fact Sheet	60 days from service of a signed Plaintiff Fact Sheet that identifies the Plaintiff's prescribing physician(s) and period of medication use.
Fact Discovery	
Plaintiffs to serve initial discovery of Defendants	21 days from CMO
Time to respond to written discovery	60 days from service
Close of fact discovery	20 months from CMO
Expert Discovery	
Plaintiffs' experts identified	18 months from CMO
Defendants' experts identified	19 months from CMO
Plaintiffs' expert reports	20 months from CMO
Defendants' expert reports	21 months, 15 days from CMO
Plaintiffs' expert rebuttal reports	22 months from CMO
Depositions of Plaintiffs' experts completed	24 months, 15 days from CMO
Depositions of Defendants' experts completed	26 months from CMO
Dispositive Motions	
Summary judgment and <i>Daubert</i> motions filed	27 months from CMO

All summary judgment and <i>Daubert</i> briefing completed	29 months, 15 days from CMO
Pretrial Conferences	
Final pretrial conferences	32 months from CMO
Trials	
The Court will establish dates and procedures for individual trials of the above-captioned cases at a later date	

VI. Later Filed Related Cases

The Parties contemplate that, as much as practicable, the general terms and timeline of this Discovery Plan will also apply in later-filed related cases, and that Plaintiffs who file related cases after the entry of the Case Management Orders in the above-captioned cases will have forty-five (45) days from the date of filing of the first Answer, or forty-five (45) days after removal to this Court, whichever is later, to serve their PFS on counsel for Defendants.

Dated: January 31, 2013

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 RYAN L. THOMPSON
 CHRISTOPHER V. GOODPASTOR
 WATTS GUERRA CRAFT LLP

By: /s/ Christopher V. Goodpastor
 Christopher v. Goodpastor
 Plaintiffs' Counsel

Dated: January 31, 2013

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By: /s/ Marissa C. Langhoff
 Marissa C. Langhoff
 Plaintiffs' Counsel

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Dated: January 31, 2013

THOMAS P. CARTMELL
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WAGSTAFF & CARTMELL

By: /s/ Thomas J. Preuss
Thomas J. Preuss
Plaintiffs' Counsel

Dated: January 31, 2013

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Dated: January 31, 2013

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Dated: January 31, 2013

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1 Dated: January 31, 2013

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WILSON, TURNER, KOSMO LLP

By: /s/ Vickie E. Turner

Vickie E. Turner
Attorneys for Defendant
Merck Sharp & Dohme Corp.

8
9 **CERTIFICATION**

10 The attorney below attests that she has obtained concurrence and authorization regarding
11 the lodging of the document from the signatories to this document.

12 Dated: January 31, 2013

13 RICHARD B. GOETZ
14 AMY J. LAURENDEAU
O'MELVENY & MYERS

15 By: /s/ Amy J. Laurendeau

16 Amy J. Laurendeau
17 Attorneys for Defendant
Amylin Pharmaceuticals, LLC